

BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK

Chairman

JIM IRVIN

Commissioner

WILLIAM A. MUNDELL

Commissioner

In the matter of

CHARLES RAY STEDMAN

3001 East Frontage Road

Amado, AZ 85629

WENDELL T. DECKER, JR.

5249 N. Adobe Circle

Tucson, AZ 85750

OXFORD DEVELOPMENT, L.L.C.

5249 North Adobe Circle

Tucson, AZ 85750

PROFUTURA, L.L.C.

P.O. Box 4252

Tubac, AZ 85646

CNT FAMILY FUN OUTLETS, INC.

One East First Street

Reno, NV 89501

CHARLES W. TESTINO, JR.

3656 E. Windy Point Dr.

Tucson, AZ 85718

CRD#1216651

ARIZONA INVESTMENT ADVISORS, INC.

2920 North Swan Road, Suite 206

Tucson, AZ 85712

KEITH B. "SKIP" DAVIS

6550 North Silversmith Place

Tucson, AZ 85750

SPY GLASS ENTERPRISES L.L.C.

6550 North Silversmith Place

Tucson, AZ 85750

KEITH B. DAVIS, INC.

6550 North Silversmith Place

Tucson, AZ 85750,

Respondents.

DOCKET NO. S-03353A-00-0000

**NOTICE OF OPPORTUNITY FOR
HEARING REGARDING PROPOSED
ORDER TO CEASE AND DESIST,
FOR RESTITUTION,
FOR ADMINISTRATIVE PENALTIES,
AND FOR OTHER AFFIRMATIVE
ACTION**

NOTICE: RESPONDENTS HAVE 10 DAYS TO REQUEST A HEARING

1 The Securities Division (“Division”) of the Arizona Corporation Commission (“Commission”) alleges
2 that respondents have engaged in acts, practices and transactions, which constitute violations of the Securities
3 Act of Arizona, A.R.S. § 44-1801 *et seq.*, (“Securities Act”).

4 **I.**

5 **JURISDICTION**

6 1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona
7 Constitution and the Securities Act.

8 **II.**

9 **RESPONDENTS**

10 2. CHARLES RAY STEDMAN (“STEDMAN”) is an individual, whose last known address is
11 3001 East Frontage Road, Amado, Arizona, 85629. STEDMAN was at all pertinent times managing
12 member of PROFUTURA, L.L.C. Beginning in or around 1995, STEDMAN signed, as “Maker”,
13 promissory notes (“Notes”) issued to private investors. In an unrelated matter, on January 21, 1994, the
14 National Association of Securities Dealers (“NASD”) censured STEDMAN, barred STEDMAN from
15 associating with any NASD member in any capacity, and fined STEDMAN \$20,000, for conduct
16 “inconsistent with just and equitable principles of trade.”

17 3. WENDELL T. DECKER, JR. (“DECKER”) is an individual, whose last known address is
18 5249 North Adobe Circle, Tucson, Arizona, 85750. DECKER was at all pertinent times a developer, who
19 planned an outlet mall development in or near Dacono, Colorado (the “Dacono Project”). DECKER signed
20 Notes issued to private investors, as managing member of OXFORD DEVELOPMENT, L.L.C.

21 4. OXFORD DEVELOPMENT, L.L.C. (“OXFORD”) is an Arizona limited liability company
22 organized on March 24, 1993. Its principal place of business is 5249 North Adobe Circle, Tucson, Arizona,
23 85750. At all pertinent times, OXFORD is the recorded owner of grassland property, which was to be the
24 site for an outlet mall (the “Dacono Project property”). The Dacono Project property was represented as
25 collateral for most of the Notes issued to investors. OXFORD is signatory to the Notes, through its managing
26 member DECKER.

1 5. PROFUTURA, L.L.C. ("PROFUTURA") is an Arizona limited liability company organized
2 on March 5, 1993. Its principal place of business is P.O. Box 4252, 190 Tubac Road, Suite 500, Tubac,
3 Arizona, 85646. At all pertinent times, PROFUTURA is a member of OXFORD, and is signatory to the
4 Notes, through its managing member STEDMAN.

5 6. CNT FAMILY FUN OUTLETS, INC. ("CNT") is a Nevada corporation incorporated on
6 June 19, 1996. DECKER is its President and Director. STEDMAN is its Secretary/Treasurer and Director.
7 Its resident agent is located at One East First Street, Reno, Nevada, 89501. CNT is signatory to the Notes,
8 through its president DECKER.

9 7. CHARLES W. TESTINO, JR. ("TESTINO") is an individual, whose last known address is
10 3656 E. Windy Point Dr., Tucson, Arizona, 85718. TESTINO was registered with the Commission as a
11 securities salesman in Arizona from November 5, 1993, until November 4, 1999. On or about September
12 15, 1998, TESTINO's former dealer, SunAmerica Securities, Inc. ("SAS"), terminated TESTINO upon
13 allegations that: "Without SAS knowledge or approval, TESTINO facilitated the lending of money via
14 promissory notes from a number of individuals to a person who was subsequently determined by the firm to
15 be subject to an industry bar." Subsequently, TESTINO was employed by Washington Square Securities,
16 Inc. from December 1998 to November 4, 1999. On March 9, 2000, the NASD found that TESTINO had
17 violated NASD Conduct Rules by engaging in private securities transactions without prior written notice to his
18 employer member firm, SAS, and sanctioned TESTINO with a \$60,000 fine and a 60 day suspension. On
19 October 3, 2000, the NASD upheld its prior decision and increased its sanctions to a suspension of six
20 months and a fine of \$177,000.

21 8. ARIZONA INVESTMENT ADVISORS, INC. ("AIA") is an Arizona corporation,
22 incorporated on August 30, 1998. Its principal place of business is 2920 North Swan Road, Suite 206,
23 Tucson, Arizona, 85712. TESTINO is at all pertinent times the president and owner of AIA.

24 9. TESTINO and AIA will be referred to collectively as "TESTINO."
25
26

10. KEITH B. "SKIP" DAVIS ("DAVIS") is an individual, whose last known address is 6550 North Silversmith Place, Tucson, Arizona, 85750. DAVIS is at all pertinent times President and shareholder of SPYGLASS ENTERPRISES, L.L.C. and KEITH B. DAVIS, INC.

11. SPYGLASS ENTERPRISES, L.L.C. (“SPYGLASS”) is an Arizona limited liability company organized on April 11, 1994. Its principal place of business is 6550 North Silversmith Place, Tucson, Arizona, 85750.

12. KEITH B. DAVIS, INC. ("DAVIS, INC.") is an Arizona corporation, incorporated on March 14, 1994. Its principal place of business is 6550 North Silversmith Place, Tucson, Arizona, 85750.

13. DAVIS, SPYGLASS, and DAVIS, INC. will be referred to collectively as “DAVIS.”

14. STEDMAN, DECKER, OXFORD, PROFUTURA, CNT, TESTINO, and DAVIS may be collectively referred to as “RESPONDENTS.” RESPONDENTS, except for TESTINO, were not registered as securities dealers or salesmen in Arizona at any time pertinent to this Notice.

III.

FACTS

15. In approximately 1993, STEDMAN and DECKER agreed that PROFUTURA was to contribute funds in the amount of \$650,000 to \$1,000,000 to OXFORD in exchange for an equity interest in the Dacono Project, an outlet mall to be developed in Dacono, Colorado.

16. In approximately March 1996, after the project owners had exhausted their personal sources of funds and were still seeking construction financing, DECKER and STEDMAN approached DAVIS to use the Notes to raise \$600,000 from private investors, for interim financing to keep the project moving until the project owners could close on a construction loan in late 1996.

17. DECKER and STEDMAN offered DAVIS commissions of 10% of all investor funds secured, and an equity interest in the project.

18. In or around July 1996, when it looked like the anticipated construction loan would not close, DAVIS recruited TESTINO to assist in soliciting additional private investor funds to keep the project “alive” until the principals could secure funding. DECKER and STEDMAN authorized DAVIS and TESTINO to

1 use the Notes to raise additional funds from private investors, and agreed to pay commissions of 10% of all
2 money raised, and an additional equity interest in the project.

3 19. DECKER and STEDMAN's plan was that STEDMAN would sign all of the Notes as
4 "Maker" and be personally liable to investors; the borrowed funds would be transferred to PROFUTURA to
5 loan to OXFORD to cover costs necessary to obtain construction financing for the project; OXFORD would
6 pledge the Dacono Project property as security for the Notes and would pay STEDMAN's obligations to
7 investors, including the interest on the Notes; and DECKER would determine what portions of the Dacono
8 Project property would be used to secure the Notes.

9 20. From approximately January 1995 through December 1999, RESPONDENTS issued,
10 offered, sold, or participated in the sale of approximately 124 Notes to approximately 110 private investors,
11 raising over \$5,000,000 from private investors.

12 21. Investors were told that their funds were to be used to develop a project described as the
13 Dacono Factory Outlet Stores or the Dacono Factory Outlet Mall and Sports Arena, and that their Notes
14 would be paid upon the due date or at the close of the construction financing.

15 22. Up until around April 1999, Notes sold to private investors were titled "PROMISSORY
16 NOTE SECURED BY DEED OF TRUST," and stated that the Notes and any renewal or extension of the
17 Notes were secured by a percent undivided interest in a deed of trust on the Dacono Project property owned
18 by OXFORD. In fact, from the inception of the project to date, less than ten private investors are
19 beneficiaries of any recorded interests in the Dacono Project property.

20 23. As part of the paperwork for the Notes, investors were required to sign form letters
21 addressed to STEDMAN, which the promoters called "Big Boy Letters." The letters stated that the investors
22 were accredited investors, defined as investors whose net worth was over \$1,000,000, or whose income was
23 at least \$200,000 for the two years prior to investment.

24 24. The interest rates on most of the Notes varied from 12% to 20% per annum. From 1995
25 through around September 1997, the term of the Notes was one year. After the project failed to obtain
26

1 construction financing, in or around September 1997, the term of most of the Notes was reduced to 90 days,
2 and existing Notes, including interest, were rolled over or renewed at the end of their terms.

3 25. DECKER offered DAVIS 10% commissions, and TESTINO was to be paid 5%
4 commissions, on rollovers, for their efforts to keep investors satisfied that there weren't problems with the
5 project. By August 2000, some of the Notes had been rolled over eighteen times.

6 26. In December 1998, one investor protested that the deed of trust that was supposed to secure
7 his Note was never recorded. Within approximately three months, in or around April 1999,
8 RESPONDENTS started to offer and sell "unsecured" Notes to new private investors.

9 27. According to Oxford's accounting records, the total principal amount due on outstanding
10 Notes issued to private investors was approximately \$5,017,000 on or about May 31, 2000. At that time,
11 the total due including interest on those notes was approximately \$22,166,000.

12 **IV.**

13 **VIOLATION OF A.R.S. § 44-1841**

14 **(Offer or Sale of Unregistered Securities)**

15 28. From in or around 1995, RESPONDENTS offered and sold securities in the form of notes,
16 evidences of indebtedness, and/or investment contracts, within or from Arizona.

17 29. The securities referred to above were not registered pursuant to the provisions of Articles 6 or
18 7 of the Securities Act.

19 30. This conduct violates A.R.S. § 44-1841.

20 **V.**

21 **VIOLATION OF A.R.S. § 44-1842**

22 **(Transactions by Unregistered Dealers or Salesmen)**

23 31. RESPONDENTS, except for TESTINO, offered or sold securities within or from Arizona
24 while not registered as dealers or salesmen pursuant to the provisions of Article 9 of the Securities Act.

25 32. This conduct violates A.R.S. § 44-1842.

26 . . .

VI.**VIOLATION OF A.R.S. § 44-1991****(Fraud in Connection with the Offer or Sale of Securities)**

33. In connection with the offer or sale of securities within or from Arizona, RESPONDENTS directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes, but is not limited to, the following:

- a) Misrepresenting that the investment was a short-term loan because a construction loan for the Dacono Project was in place and investors would be paid in full at the close of that loan, when in fact there were a series of purported loan "commitments" that never materialized and the principals never succeeded in negotiating construction financing for the project;
- b) Misrepresenting until at least April 1999 that the Notes, and any extensions, renewals or rollovers of the Notes, were secured by a recorded interest in a deed of trust on a portion of the Dacono Project property located in Weld County, Colorado and owned by OXFORD; and misrepresenting that the total of all loans secured by Lot 6 would not exceed one million dollars. In fact only approximately eight of the original investors in 1996 and early 1997 were identified as beneficiaries on recorded deeds of trust, the total of all loans misrepresented as secured by Lot 6 far exceeded one million dollars, and the property that was supposed to be pledged to private investors was utilized instead as security to obtain financing from institutional "bridge" lenders;
- c) Representing that investor funds were to be used to develop the Dacono Project, when in fact, investor funds were used primarily for attorney fees and loan fees for failed funding attempts, attempts to obtain tax benefits for the future owners of the

1 project, redeeming prior investors' defaulted Notes, interest payments to early
2 investors with secured loans, profits to bridge lenders, DECKER's living expenses,
3 and DECKER's and STEDMAN's travel expenses;

4 d) Failing to disclose the risks involved with this development project, specifically, the
5 uncertainty of getting construction financing, the repeated failed attempts to obtain
6 construction financing and bond funding, the costs of attempts to obtain financing, and
7 STEDMAN's inability to repay the Notes, if construction financing was not secured;

8 e) Failing to disclose to new investors that earlier investors were forced to accept
9 rollover Notes because STEDMAN and OXFORD could not pay the Notes when
10 due, the total debt owed to prior investors including interest on defaulted Notes, and
11 the commissions owed to DAVIS and TESTINO resulting from rollovers;

12 f) Failing to disclose the background and financial condition of the principals and the
13 project, including but not limited to the following:

14 (1) That DECKER had previously filed bankruptcy in 1989, and, as a result,
15 private investors in prior factory outlet mall projects had lost their investments;

16 (2) That on January 21, 1994, the NASD censured STEDMAN, barred
17 STEDMAN from associating with any NASD member in any capacity, and
18 fined STEDMAN \$20,000, for conduct "inconsistent with just and equitable
19 principles of trade," because STEDMAN had failed to timely and fully
20 respond to a request for information from the NASD concerning a complaint
21 alleging that he had misappropriated \$175,000 from the customer's account;
22 and

23 (3) That TESTINO was terminated on September 15, 1998, by his former
24 dealer, SunAmerica Securities, Inc. ("SAS"), upon allegations relating to his
25 sale of these Notes, specifically, that "Without SAS knowledge or approval,
26 Testino facilitated the lending of money via promissory notes from a number

of individuals to a person who was subsequently determined by the firm to be subject to an industry bar;” and that TESTINO was under investigation by the NASD for violations of NASD Rules as a result of his unauthorized activity;

g) Failing to disclose that the Notes were securities, that RESPONDENTS were selling the Notes to investors who were not accredited investors, and that the Notes were not exempt from securities registration requirements and not registered.

34. This conduct violates A.R.S. § 44-1991.

35. As a separate and additional basis for liability under A.R.S. § 44-1991, all RESPONDENTS made, participated in or induced the sale or purchase of a security within the meaning of A.R.S. § 44-2003(A). Therefore, they are liable for the above violations of A.R.S. § 44-1991.

36. As an additional separate and additional basis for liability under A.R.S. § 44-1991, during the above violations of A.R.S. § 44-1991, DECKER directly or indirectly controlled OXFORD within the meaning of A.R.S. § 44-1999. Therefore, DECKER is liable to the same extent as OXFORD for its violations of A.R.S. § 44-1991.

VIII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief against RESPONDENTS:

1. Order RESPONDENTS to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. § 44-2032;

2. Order RESPONDENTS to take affirmative action to correct the conditions resulting from their acts, practices or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order RESPONDENTS to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036; and

4. Order any other relief that the Commission deems appropriate.

VIII.

HEARING OPPORTUNITY

RESPONDENTS may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. A request must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. Each RESPONDENT requesting a hearing must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover sheet must accompany the request. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made, the Commission may, without a hearing, enter an order against each RESPONDENT who did not request a hearing granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format. To request an alternate format or an accommodation, contact Shelly M. Hood, ADA Coordinator, voice phone number 602/542-3931, e-mail shood@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the accommodation.

Dated this _____ day of _____, 2000.

Mark Sendrow
Director of Securities